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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR

**ORDER**

Ramniwas Vs. State of Rajasthan & Anr.  
**S.B. CR. REVISION PETITION NO.170/2006**

Against order dated 25.01.2006 passed by  
Special Judge, SC/ST (Prevention of Atrocities)  
Act Cases, Churu in Sessions Case No.9/2006  
State Vs. Rajkumar & Ors.

DATE OF ORDER :: 13<sup>th</sup> December, 2006.

**PRESENT**

**HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK**

Mr. P.K. Sharma for petitioner.  
Mr. V.R. Mehta, Public Prosecutor.

**BY THE COURT:**

Discharge of the accused respondents and not framing charge against them under Sec.458 of the IPC has led the present petitioner to file this petition under Sec.397 read with Sec.401 Cr.P.C. challenging the orders dated 25.01.2006 and 04.02.2006 passed by Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Churu in Sessions Case No.9/2006 State Vs. Rajkumar & Ors.).

The complainant present petitioner lodged a report at Police Station, Rajgarh on 27.10.2005 mentioning therein to the effect that at about 8:30–9 PM when he was at his house and his father was taking his meals, accused respondents entered into the house with their faces covered and abusing them started giving beatings with lathis and iron rods. On their making hue and cry for safety of their lives, the neighbours came to their rescue and some of them also sustained injuries at the hands of accused respondents. A case was registered under Sec.147, 148, 149, 452, 323 IPC and Sec.3(1)(x) of the SC/ST (Prevention of Atrocities) Act and after investigation police filed chargesheet against the accused respondents for the offence under Sec.458, 504, 323, 147, 148, 149 IPC and Sec.3(1)(x) of the SC/ST Act. The Magistrate concerned after taking cognizance committed the case for trial to the Court of Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Churu, who vide his orders dated 25.01.2006 and 04.02.2006 discharged the accused respondents from the charge of offence under Sec.458 IPC, hence this revision.

The contention of the learned counsel is that in the instant case charge under Sec.458 IPC was required to be framed against the accused respondents named in the First Information Report, who entered in the house after sunset and before sunrise well prepared for assaulting and caused hurt to the petitioner.

On the other hand, learned Public Prosecutor supported the orders passed by Court below.

The point to be decided in this revision petition is whether charge for the offence under Sec.458 IPC is liable to be framed against the accused respondents or not. To decide this, it would be apposite to go through the language of Section 458, which reads as under:

**"458. Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint.-**

Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of

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either description for a term which may extend to fourteen years, and shall also be liable to fine”.

It is to be seen that in relation to an offence under Sec.458 IPC, it is necessary that offence should consist ingredients of lurking house trespass or house breaking by night after preparation for hurt. In the present case, the incident has taken place at about 8:30 PM and the injuries caused by blunt object to the complainant party are simple in nature. It is on record that accused respondents when entered in the house they had not broken the door of the house but directly entered in the house and the accused persons named in the First Information Report were infact not concealing their faces and were already known to the complainant party and there was some enmity between the complainant and the accused party also.

In the above circumstances, no lurking house trespass was committed by the accused respondents so as to bring their act within the purview of Sec.458 of the IPC. It may be stated here that lurking house trespass means a trespass with precautions to conceal the same from some

person who has a right to exclude or eject the trespasser from a house. In the First Information Report, a simple mention has been made naming the accused respondents that they came with lathis and iron rods in their hands and started beating the complainant party. For finding the accused respondents guilty for offence under Sec.458 of the IPC, the prosecution was required to place on record something more and to show that the accused respondents in the present case had made preparations or had taken some precautions to conceal their house trespass. This part of the offence is completely missing in the present matter. In my opinion, the essence of lurking house trespass is apparently to conceal the act. In this regard, the statements of the witnesses recorded under Sec.161 of the Cr.P.C., particularly of Ramniwas, who has lodged the First Information Report, mentions the names of all the accused respondents and further states that 4-5 persons were also with the accused respondents whose names were not known to him. In this statement, even it has not been stated that some 4-5 persons had concealed their identity. In other statement of Pankaj Kumar, what has been stated is that on 27.10.2005 in the night the accused persons entered in the

house having iron rods and lathis in their hands and started abusing the complainant party and on asking by Ramniwas not to abuse them, some of them started beating the complainant party by fists and lathis. Even this statement does not make mention that anybody out of the accused persons or all of them were concealing his or their identity. Baghu Ram has also not stated that the accused persons or persons accompanying them were hiding their identity. The same is the position in the statements of Dilip Kumar, Mahaveer Prasad, Sumitra, Jai Singh and others.

In view of above factual matrix, it cannot be said that accused respondents can be held guilty for an offence punishable under Sec.458 of the IPC even if the statements recorded during the course of investigation taken to be as it is. The learned trial Court after having considered the entire material placed before it reached to the conclusion that in the facts and circumstances of the case, accused respondents were liable to be prosecuted only for offence under Sec.147, 148, 149, 452, 323 and Sec.3(1)(x) of SC/ST (Prevention of Atrocities) Act. In my opinion, the trial Court has correctly drawn the conclusions. Simply

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because in the night i.e. at about 8:30 or 9 PM on the day of incident, the accused party entered the house without concealing their identity without breaking doors etc. then in the absence of relevant material as discussed above, a charge under Sec.458 could not be maintained. I do not find any merit in the contention of the learned counsel that since in the night the accused entered in the house and gave beatings and caused injury, therefore they were liable to be prosecuted under Sec.458 of the IPC.

In view of above, the order passed by the learned trial Court suffers from no infirmity or illegality which calls for interference by this Court in revisional jurisdiction.

The revision petition being devoid of merit, stands dismissed.

**(SATYA PRAKASH PATHAK) J.**

/jpa